UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

| |
|---|
| SOUTH CHICAGO CABLE, INC., AN INDIRECT SUBSIDIARY OF AT&T BROADBAND[1] |
| Employer |
| and |
| SHIRLEY COLVIN |
| Petitioner |
| and |
| INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS , LOCAL 21, AFL-CIO |
| Intervenor |

Case 13-RD-2362

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.[4]

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Section 2(*6*) and (*7*) of the Act for the following reasons:

---

[1] The names of the parties appear as amended at the hearing.
[2] The positions of the parties as stated at the hearing and in their briefs have been carefully considered.
[3] The Employer is a corporation engaged in the business of providing cable television services.
[4] The Intervenor is the incumbent representative of the employees in the unit covered by the instant petition.

**FACTS:**

AT&T and the International Brotherhood of Electrical Workers ("International") have maintained a longstanding nationwide collective bargaining relationship. Pursuant to that relationship, the AT&T and the International entered into a *Memorandum of Understanding Regarding Neutrality and Consent Election* in 1998 setting forth a private mechanism for the resolution of initial representational matters without resorting to the processes of the Board. The memorandum provided a detailed procedure for the resolution of questions concerning representation, including, *inter alia*, the initiation of a formal campaign, the conduct of an election, and the certification of results of an election. In a letter dated March 29, 2000, the Intervenor in this matter initiated a formal organizing drive at the Employer's facility currently located at 721 East 112th Street, Chicago, Illinois ("South Chicago facility"). There is no evidence that any other labor organization had an interest in representing the employees at the South Chicago facility at the time the Intervenor initiated its organizing campaign.

After the Intervenor initiated the representational campaign, the parties entered into an agreement with the American Arbitration Association ("AAA") for the conduct of a private secret-ballot election on June 1, 2000. The election was scheduled to take place on June 7, 2000, under the supervision of the AAA in an agreed upon unit described as follows:

> Included are all full time and part time employees working at any level in the following job titles: installers, advanced installers, service technicians, lead technicians, system technicians, advanced technicians, schedulers/routers, warehouse, custodians, fleet mechanics, customer sales and service representatives, and accounting clerks;
>
> Excluded are all outside sales personnel, all managers, supervisors and professional employees, all confidential employees, administrative assistants and employee relations clerks/assistants, and guards as defined by the National Labor Relations Act, as amended.

The Intervenor won the election and the AAA issued a certification of results on June 14, 2000. The bargaining unit consisted of approximately 140 employees.

It is undisputed that between June 14 and October 11, 2000, the Employer and the Intervenor engaged in a series of steps designed to initiate the process of collective bargaining for the South Chicago facility. The Intervenor sent a series of letters to the Employer requesting information concerning the current status of wages and benefits for bargaining unit employees; appointed stewards for the bargaining unit; and, entered into multi-party discussions to explore the possibility of covering the South Chicago unit under the terms of the existing national bargaining agreement between AT&T and the International. The multi-party discussions did not succeed, and, by October 17, 2000, the Employer and the Intervenor began the process of negotiating a single facilty collective-

bargaining agreement covering the Employer's South Chicago bargaining unit employees.

Between October 17, 2000 through April 30, 2001, the Employer and the Intervenor met on twenty occasions for the purpose of negotiating an initial collective bargaining agreement. In addition, the parties attempted to negotiate common contract language covering all the AT&T Broadband units represented by the IBEW in the surrounding geographical area. At the time of the hearing, the Employer and the Intervenor had tentatively agreed to thirty-five subjects for a collective-bargaining agreement. Those items include, *inter alia*, work hours, fringe benefits, grievance/ arbitration procedures, a no-strike clause, union security, wage differentials, and management rights. The record shows that the parties have agreed to approximately ninety per-cent of a collective bargaining agreement; are continuing to bargain with future bargaining sessions scheduled; and, are not at a bargaining impasse at the present time.

## ANALYSIS

The Board encourages voluntary recognition and bargaining by permitting the parties "a reasonable time to bargain and to execute the contracts resulting from such bargaining." *Keller Plastics Eastern, Inc*., 157 NLRB 583, 587 (1966). When an employer voluntarily recognizes a union, the parties are entitled to rely on "the continuing representative status of the lawfully recognized union for a reasonable period of time." *Blue Valley Machine & Mfg. Co*., 180 NLRB 298, 304 (1969). This presumption of continuing majority status is not based on an absolute certainty that the union's majority status will not erode. Rather, it is a policy judgment which seeks to ensure that the bargaining representative chosen by a majority of employees has a reasonable opportunity to engage in bargaining to obtain a contract on the employees' behalf without interruption.

A reasonable time is not measured by the duration spent on bargaining, but upon what transpired and what the parties accomplished during bargaining sessions. *Ford Center for the Performing Arts*, 328 NLRB No. 1, slip op. at 1 (1999). The Board examines the unique factual circumstances of each case to determine if the parties had sufficient time to reach agreement, by considering the degree of progress made in negotiations, the lack of an impasse, and whether the parties were negotiating for an initial contract. The Board is reluctant to frustrate good-faith bargaining and negate fruitful negotiations for an initial contract when the parties are on the verge of reaching a final agreement. *N. J. MacDonald & Sons, Inc*., 155 NLRB 67, 71 (1965).

It is the opinion of the undersigned that a reasonable period of time to bargain had not passed by the time the petition was filed herein. There is no evidence in the record showing a lack of diligence or effort on the part of all parties concerned to arrive at successful conclusion to the negotiations and achieve an initial contract covering fourteen job classifications engaged in a complex and swiftly changing technological market. As an initial matter, the petition herein was filed a little less than 10 months after the AAA certified the results of the election on June 14, 2000. Initially, the Employer and the Intervenor attempted to negotiate between themselves and their nationwide counterparts,

AT&T Broadband and the International, in an effort to apply the terms of the nationwide agreement the Employer's unit employees. Failing in this endeavor, the Employer and the Intervenor immediately began to extensive and fruitful negotiations for a single facility agreement. Specifically, the record shows that the parties have diligently engaged in extensive negotiations, attempted to reach agreement, avoided impasse, and consistently expressed their desire to both complete negotiations and execute a contract. The results of their efforts have been fruitful with ninety percent of an agreement having been reached, and bargaining is continuing. In short, the parties herein have not been afforded a reasonable time to bargain and to execute a contracts resulting from such bargaining. *MGM Grand Hotel*, 329 NLRB No. 50 (1999).

## ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by **May 25, 2001**.

**DATED** May 11, 2001 at Chicago, Illinois.

/s/ Elizabeth Kinney
Elizabeth Kinney, Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, IL 60606

347-2067